

BILL NO. 50 -2007

AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE THE LEASE BETWEEN THE CITY OF READING AND ALVERNIA COLLEGE FOR PORTIONS OF BUILDINGS LOCATED ON CAMPUS FOR THE PURPOSE OF OPERATING THE READING POLICE ACADEMY.

WHEREAS, Alvernia College is the legal owner of certain property located at 400 St. Bernadine Street and 500 Upland Avenue; and

WHEREAS, the City of Reading desires to lease a portion of said property for the purpose of classroom training, firearms simulator training and other appropriate activities related to the Reading Police Academy, as set forth in the attached Exhibit A;

NOW, THEREFORE THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The Mayor is authorized to execute any and all documents to facilitate and effectuate the lease between the City of Reading and Alvernia College for a certain portion of property located at 400 St. Bernadine Street and 500 Upland Avenue in accordance with terms set forth in the attached Exhibit A.

SECTION 2. This Ordinance shall be effective ten (10) days after passage.

Enacted June 25, 2007

[Signature]
President of Council

Attest:

[Signature]
City Clerk

(Council Staff)

Submitted to Mayor: [Signature]

Date: 6-26-07

Received by the Mayor's Office: MH

Date: 6-26-07

Approved by Mayor: [Signature]

Date: 6/26/07

Vetoed by Mayor: _____

Date: _____

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Ordinance passed by the Council of the City of Reading, on the 25 day of June A. D. 20 07. Witness my hand and seal of the said City this 27 day of June A. D. 20 07.

[Signature]
CITY CLERK

LEASE

THIS AGREEMENT OF LEASE (the "Lease") dated to be effective the 1st day of August, 2007, by and among Alvernia College, with an address of 400 Saint Bernardine Street, Reading, Pennsylvania 19607-1799 (hereinafter referred to as "Lessor") and the City of Reading, with an address of 815 Washington Street, Reading, Pennsylvania 19601 (hereinafter referred to as "Lessee").

BACKGROUND:

A. Lessor is the owner of buildings on the Alvernia College campus located at 400 Saint Bernardine Street and 540 Upland Avenue, Reading, Pennsylvania, known as Francis Hall and the Upland Center.

B. Lessee desires to lease portions of the buildings known as Francis Hall or the Upland Center (the "Premises") for the purpose of operating classroom training, firearms simulator training and other appropriate activities related to the Reading Police Academy.

C. Lessor is willing to lease the Premises to Lessee upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, intending to be legally bound hereby, the Lessor and the Lessee stipulate, covenant and agree as follows:

1. Demise and Rental. Lessor, for and in consideration of the covenants, conditions, agreements and stipulations of Lessee hereinafter set forth, does hereby demise and lease to Lessee the Premises, consisting of: (i) two (2) classrooms which will be available to Lessee, to be scheduled jointly by Lessee and Lessor, with Lessee having first priority for scheduling; (ii) one (1) room which will house the firearms simulator and may also be used for administrative

functions; (iii) two (2) offices for Lessee's faculty and staff; and (iv) a reception area for Lessee. The Premises shall be located in either Francis Hall or the Upland Center. In addition, Lessor will make available to Lessee the use of Lessor's athletic fields and Physical Education Center, which use may be scheduled by Lessee as long as it does not interfere with other activities of Lessor at those facilities. Lessor shall also provide Lessee with the use of parking spaces on the Alvernia College campus, which spaces shall be designated by Lessor and be in locations that preserve the preferred parking spaces for Lessor's students.

2. Use of Premises. The Premises shall be used only for the purpose of operating the Reading Police Academy, and shall be used for no other purpose.

3. Term of Lease. The term of this Lease shall be ten (10) years (the "Lease Term") commencing on August 1, 2007 (the "Commencement Date") and ending on July 31, 2017.

4. Rent. Commencing on the Commencement Date and monthly thereafter on the same day of the month, Lessee covenants, stipulates and agrees to pay to Lessor a basic rental amount for the Premises the sum of One Thousand Three Hundred Fifty Dollars (\$1,350.00) per month during the first year of Lease Term ("Basic Rent"). Thereafter, Basic Rent shall be adjusted annually commencing one (1) year from the Commencement Date (the "Adjustment Date") in the following manner:

(a) The Basic Rental shall be increased as of each Adjustment Date in the same proportion as the CPI reported for the month that is three (3) months prior to the Adjustment Date bears to the CPI for the month that is three (3) months prior to the proceeding Adjustment Date (or, in the case of the Adjustment Date at the first anniversary of the Commencement Date, for the month that is three (3) months prior to the date on which the

Commencement Date occurred), but in no event by an amount less than three percent (3%) or in excess of six percent (6%). In no event shall the Basic Rental be decreased.

(b) The Basic Rental, as adjusted, shall remain fixed and payable until the next succeeding Adjustment Date or until the expiration of the Lease Term, as the case may be.

(c) If, during the term of this Lease, the CPI is changed or discontinued, Landlord and Tenant shall agree on a comparable index, formula, or other means of measurement of the relative purchasing power of the dollar, and such substitute index, formula, or other means shall be utilized in place of the CPI as if it had been originally designated in this Lease.

(d) As used in this Lease, "CPI" shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor (1982-84 = 100) for "all items" for Philadelphia, Pennsylvania.

5. Late Charge. In the event that Lessee shall fail to pay any Basic Rent within ten (10) days of the date when the same shall become due, Lessee shall be obligated to pay Lessor a late charge of Twenty Five Dollars (\$25.00) in addition to the payment then due, which late charge shall also be considered as additional rent.

6. Lessor's Responsibilities. Lessor shall be responsible for the payment of and/or for the providing or obtaining of the following:

(a) Fire and extended coverage insurance pertaining to the Premises, but not including Lessee's furniture, furnishings, equipment, and other personal property, insurance coverage for which shall be Lessee's sole responsibility;

(b) All structural and exterior repairs and maintenance required to the Premises, including (without limitation), the roof, gutters, down spouts, exterior walls, including

adequate trimming and care of the lawn, trees and shrubbery, as well as snow removal from all sidewalks and walkways, and trash removal;

(c) All electricity, telephone, gas, and other utility services provided to the Premises;

(d) All water and sewer rents or other similar charges; and

(e) All maintenance and repairs of heating ventilation, air conditioning, plumbing and electrical.

7. Lessee's Responsibilities. Lessee shall have the responsibilities of providing or obtaining all of the following, at Lessee's sole expense:

(a) All premiums for public liability insurance and for insurance on the Lessee's personal property located in the Premises; and

(b) All other interior maintenance and repairs of the Premises not provided by Lessor.

(c) Lessee shall provide two (2) scholarships annually to Alvernia College students enrolled in the College's Criminal Justice major; provided, however that each of two (2) students qualify for admission to the Academy and at least ten (10) students are enrolled in an Academy class paying tuition to the Academy. The scholarships shall cover tuition only and not fees and expenses.

8. Condition of Premises; Damages. Lessee at all times shall keep the Premises in a clean and sanitary condition free of debris. Lessee, shall, at Lessee's cost, keep and maintain the Premises, in as good condition as they may be at the beginning of the term of the Lease, ordinary wear excepted. Lessee shall immediately repair or cause to be repaired at Lessee's own cost and

expense any and all damage to the Premises caused by the willful or negligent conduct of Lessee, Lessee's servants, agents, employees, business visitors, invitees and licensees.

9. Lease Subordinated.

(a) This Lease shall be subject and subordinate at all times to the lien of any mortgage or other encumbrance heretofore or hereafter placed upon the Lessor's interest or estate in the Premises and to all renewals, modifications, consolidations, replacements and extensions thereof (collectively a "Mortgage") which subordination shall be automatic and without the necessity of any further action on the part of Lessee to effect such subordination. Lessee, at the request of the holder of any such Mortgage shall attorn to such holder and shall execute, acknowledge and deliver, upon demand by Lessor or such holder, such further instruments evidencing such subordination of the Lessee's right, title and interest under this Lease, to the lien of any such Mortgage, and such further instrument or instruments of attornment as shall be desired by such holder.

10. Alterations and Improvements. Lessee shall make no alterations, changes, additions, or improvements to the Premises without first obtaining the written consent of Lessor, which consent shall not be unreasonably withheld. All alterations, changes, additions or improvements to the Premises shall become the property of the Lessor, and shall be surrendered with the Premises as a part thereof at the expiration or other termination of this Lease. Any fixtures and equipment installed by Lessee may be removed at the expiration or other termination of this Lease; provided, however, that Lessee shall at its own cost restore the Premises to the same condition as at the commencement of the term hereof.

11. Insurance. Lessee agrees to maintain, at its own cost, public liability insurance with reference to the Premises in an amount of not less than One Million Dollars (\$1,000,000.00)

with respect to the Lessee's use and occupancy of the Premises. Any public liability policy or policies shall name both Lessor and Lessee as insureds, shall contain appropriate clauses waiving subrogation against Lessor and Lessee, and shall provide that the same shall not be canceled without at least ten (10) days prior written notice to Lessor. Copies of all public liability policies or certificates of insurance shall be furnished by Lessee to Lessor.

12. Indemnification By Lessee. Lessee agrees to indemnify the Lessor against loss and save Lessor harmless from liability arising from all claims of third persons relating in any way to Lessee's use or occupancy of the Premises or to the performance or non-performance by Lessee of any of its obligations under this Lease including, but not limited to, all costs, reasonable counsel fees and expenses incurred under any such claim for which indemnification has been provided under this Section 12. In case any action or proceeding shall be brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, shall provide Lessor with counsel to defend such action or proceeding. Lessee shall, within ten (10) days following notice to it of any claim of a third party relating to Lessee's use or occupancy of the Premises or to the performance or non-performance by Lessee of its obligations under this Lease, give written notice to the Lessor of such claim.

13. Fire or Other Casualty. If the Premises are damaged or destroyed by fire or other casualty, Lessor, at its expense, shall promptly restore the Premises as nearly as possible to its prior condition. If the Premises are more than fifty percent (50%) destroyed or so damaged by fire or other casualty, regardless of whether covered by insurance, so as to render it unfit for its intended use, Lessor may terminate this Lease by giving at least ten (10) days', but not more than thirty (30) days' notice. Such notice must be given within sixty (60) days after the date of such damage or destruction. In such case, Lessee shall pay the Rent apportioned to the date of such

termination, and Lessor may enter upon and repossess the Premises without further notice. If Lessor does not elect to terminate this Lease, Lessor will repair the Premises and Lessor may enter and repossess the Premises for that purpose. During such period as Lessee is deprived of the use of the Premises, the Rent shall be abated in proportion to the number of square feet of the Premises rendered untenable. If the damage is such that the Premises are not rendered unfit for occupancy, Lessor will repair whatever portion, if any of the Premises may have been damaged, Lessee will continue in possession, and the Rent will not be apportioned or abated.

14. Condemnation. If the whole or any substantial portion of the Premises is taken through the exercise of the power of eminent domain, this Lease shall terminate on the date when possession of the Premises is required by the condemning authority, and Lessee shall have no claim against Lessor and shall not have any claim or right to any portion of the amount that may be awarded as damages or paid as a result of any such condemnation or purchase including, without limitation, any right of Lessee to damages for loss of its leasehold estate. All right of Lessee to damages, therefore, are hereby assigned by Lessee to Lessor. The foregoing shall not, however, deprive Lessee of any separate award for moving expenses, business dislocation damages or any other award, which would not reduce the award payable to Lessor. Upon the date the right to possession shall vest in the condemning authority, this Lease shall cease and terminate, with Rent adjusted to such date and Lessee shall have no claim against Lessor for the value of any unexpired term of this Lease.

15. Compliance with Laws. Lessee agrees to comply with all requirements promulgated by any governmental authorities and of the local Board of Fire Underwriters affecting said Premises as far as such requirements affect or are due to Lessee's use or occupancy.

16. Assignment and Sublet. Lessee shall not assign or sublet this Lease without the consent of the Lessor first being obtained in writing, which consent may be granted or withheld at Lessor's sole discretion. Any attempted assignment or subletting without Lessor's written consent shall be deemed to be an Event of Default hereunder. Any assignee shall assume in writing all of Lessee's duties and obligations hereunder, but such assignment and assumption shall not relieve Lessee from any of its obligations and duties under this Lease.

17. Lessor's Access to Premises. Lessee shall allow Lessor and Lessor's agents or representatives free access to the Premises for the purpose of examining the same.

18. Events of Default. The occurrence of any one or more of the following events shall constitute an event of default ("Event of Default") of the Lessee under this Lease:

(a) Lessee shall fail to pay within five (5) days of the date when due any installment of Rent, or shall fail to pay within five (5) days after written notice from Lessor any additional Rent or other sums due under this Lease;

(b) Lessee shall fail to observe or perform any of the covenants, terms and conditions contained in this Lease on the Lessee's part to be observed or performed (other than the monetary payments referred to in subsection (a) above) and such failure shall continue and not be cured for a period of thirty (30) days after written notice to the Lessee by the Lessor; or if more than thirty (30) days is reasonably required to cure such failure with reasonable diligence, Lessee shall not have promptly commenced to correct the same within thirty (30) days after such written notice from Lessor, or shall, having promptly commenced to correct such failure, thereafter fail to pursue the same to completion with reasonable diligence;

(c) Lessee shall have recorded or attempted to record this Lease;

(d) Lessee shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, recapitalization, readjustment, liquidation or dissolution or similar relief under any present or future bankruptcy or similar laws of the United States or political subdivision thereof, or shall seek or consent to or acquiesce in the appointment of any Trustee, receiver or liquidator of all or any substantial part of Lessee's properties, or shall make any assignment for the benefit of creditors, or shall admit in writing Lessee's inability to pay Lessee's debts generally as they become due;

(e) Lessee shall abandon the Premises or vacate the Premises prior to the expiration of the Lease term; or

(f) Lessee shall assign, sublet, lease or permit the Premises to be occupied by someone other than Lessee.

19. Lessor's Remedies.

(a) Upon the occurrence of an Event of Default, Lessor shall have the right, if Lessor so elects to give Lessee written notice of the termination of this Lease as of the date specified in such notice. Upon the giving of such notice, the term of this Lease and the estate hereby granted shall expire and terminate on the date so specified as fully and completely and with the same effect as if such date were the original date originally fixed by this Lease for the expiration of the Lease term and all rights of Lessee under this Lease shall expire and terminate, but Lessee shall remain liable as hereinafter provided.

(b) Upon the occurrence of an Event of Default, Lessor shall have the immediate right whether or not this Lease shall have been terminated) to re-enter and repossess

the Premises or any part thereof by summary proceedings, ejectment, self-help, or otherwise and the right to remove all persons and properties therefrom.

(c) Upon the occurrence of an Event of Default, whether or not this Lease has been terminated, Lessor may relet the Premises or any part thereof in the name of Lessee or Lessor or otherwise, for such term or terms, which may be greater or less than the period which would otherwise have constituted the remaining balance of the term of this Lease, and on such conditions, which may include concessions or free rent, and for such uses as Lessor may, in its discretion as to all such matters deem prudent. Lessor may collect and retain all Rents payable by reason of any such reletting.

(d) No termination of this Lease pursuant to this Section 20 or by operation of law or otherwise and no re-entry, repossession or reletting of the Premises or any part thereof, shall relieve Lessee of any of Lessee's liabilities and obligations under this Lease, all of which shall survive such termination, re-entry, repossession or reletting.

(e) Upon the occurrence of an Event of Default, Lessor shall be entitled by notice to Lessee to declare immediately due and payable, as if by the terms of this Lease all such amounts were payable in advance, the whole Rent for the entire balance of the Lease term, together with all additional Rent and all other sums required to be paid by Lessee under the terms of this Lease, and Lessor may proceed immediately to collect any or all of such amounts by any or all of the following means: distrains or other levy, action at law, filing a Proof of Claim in any bankruptcy, insolvency or like proceeding, or any other remedy at law or at equity available to Lessor at the time.

(f) In addition to the foregoing remedies, Lessor shall be entitled to receive as additional damages, the sum of the following: all reasonable attorneys' fees incurred by Lessor in

collecting amounts due from Lessee under this Lease or otherwise incurred by reason of the occurrence of an Event of Default, all court costs and fees for collection, and all costs of re-entry and repossession, removal of property, distraint or sale of property or other levy, watchmen's wages and other expenses of protecting the Premises from vandalism or other damage, and all other reasonable costs incurred by Lessor by reason of the occurrence of an Event of Default by Lessee hereunder.

20. Availability of All Remedies. No termination of this Lease, or taking or recovering of possession of the Premises, or entry of any judgment either for possession or for any money claimed to be due the Lessor, shall deprive the Lessor of any other action against the Lessee for possession, or for any money due the Lessor hereunder, whether as Rent, additional Rent, or otherwise, or for damages hereunder.

21. Non-waiver of Lessor's Remedies. Failure of the Lessor or the Lessee to exercise any right under the provisions of this Lease on any one or more occasions shall not be construed as a waiver thereof on any subsequent occasion and recourse to any one or more remedies granted by this Lease or by law shall not be deemed a waiver of or a bar to any other remedy or remedies, it being the intent that remedies shall be cumulative and not exclusive.

22. Notices. All notices and writings required under this Lease shall be deemed to be properly served if delivered personally or sent by registered or certified mail, return receipt requested, to the Lessor at 400 Saint Bernardine Street, Reading, Pennsylvania 19607-1799 or to Lessee at the Premises or at such other address as Lessor or Lessee, may designate in writing from time to time. All notices shall be deemed given when deposited in said mail.

23. Binding Effect. The conditions, covenants and agreements contained in this Lease shall be kept and performed by the parties hereto, shall be binding upon and inure to the benefit

of the Lessor and Lessor's successors and assigns, and the Lessee and Lessee's successors and permitted assigns.

24. Governing Law. This Lease shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania.

25. Broker. Lessor and Lessee warrant and represent to each other that they dealt with no brokers in connection with this Lease and agree to hold the other party harmless from and against any claims for commissions by any other broker arising by reasons of its actions in connection with the execution of this Lease.

26. Quiet Enjoyment. Upon Lessee's compliance with the terms and provisions of this Lease, including the payment of all Rent and additional Rent hereunder, Lessee shall peaceably hold and enjoy the premises during the Lease term, without hindrance or interruption by Lessor or any person claiming under Lessor.

IN WITNESS WHEREOF, the Lessor and Lessee have caused this Agreement of Lease to be executed as of the day and year first above written.

ALVERNIA COLLEGE

By: _____
Douglas F. Smith, Vice President
"Lessor"

Attest:

CITY OF READING

City Clerk

By: _____
Mayor
"Lessee"